

PATENT COOPERATION TREATY

From the INTERNATIONAL SEARCHING AUTHORITY

To:
PETER C. MEI /VDD
BINGHAM MCCUTCHEN LLP
THREE EMBARCADERO CENTER, SUITE 1800
SAN FRANCISCO, CA 94111-4067

RECEIVED

PCT

DEC 05 2005

Bingham McCutchen
IP Docket Dept.

NOTIFICATION OF TRANSMITTAL OF
THE INTERNATIONAL SEARCH REPORT AND
THE WRITTEN OPINION OF THE INTERNATIONAL
SEARCHING AUTHORITY, OR THE DECLARATION
(PCT Rule 44.1)

Date of mailing
(day/month/year) **01 DEC 2005**

Applicant's or agent's file reference
VM7031436001

FOR FURTHER ACTION See paragraphs 1 and 4 below

International application No.
PCT/US05/08037

International filing date
(day/month/year) 14 March 2005 (14.03.2005)

Applicant
VARIAN MEDICAL SYSTEMS TECHNOLOGIES, INC.

1. ☒ The applicant is hereby notified that the international search report and the written opinion of the International Searching Authority have been established and are transmitted herewith.

Filing of amendments and statement under Article 19:

The applicant is entitled, if he so wishes, to amend the claims of the international application (see Rule 46):

When? The time limit for filing such amendments is normally two months from the date of transmittal of the international search report.

Where? Directly to the International Bureau of WIPO, 34 chemin des Colombettes
1211 Geneva 20, Switzerland, Facsimile No.: (41-22) 338.82.70.

For more detailed instructions, see the notes on the accompanying sheet.

2. ☐ The applicant is hereby notified that no international search report will be established and that the declaration under Article 17(2)(a) to that effect and the written opinion of the International Searching Authority are transmitted herewith.

3. ☐ With regard to the protest against payment of (an) additional fee(s) under Rule 40.2, the applicant is notified that:

☐ the protest together with the decision thereon has been transmitted to the International Bureau together with the applicant's request to forward the texts of both the protest and the decision thereon to the designated Offices.

☐ no decision has been made yet on the protest; the applicant will be notified as soon as a decision is made.

4. Reminders

Shortly after the expiration of 18 months from the priority date, the international application will be published by the International Bureau. If the applicant wishes to avoid or postpone publication, a notice of withdrawal of the international application, or of the priority claim, must reach the International Bureau as provided in Rules 90bis.1 and 90bis.3, respectively, before the completion of the technical preparations for international publication.

The applicant may submit comments on an informal basis on the written opinion of the International Searching Authority to the International Bureau. The International Bureau will send a copy of such comments to all designated Offices unless an international preliminary examination report has been or is to be established. These comments would also be made available to the public but not before the expiration of 30 months from the priority date.

Within 19 months from the priority date, but only in respect of some designated Offices, a demand for international preliminary examination must be filed if the applicant wishes to postpone the entry into the national phase until 30 months from the priority date (in some Offices even later); otherwise, the applicant must, within 20 months from the priority date, perform the prescribed acts for entry into the national phase before those designated Offices.

In respect of other designated Offices, the time limit of 30 months (or later) will apply even if no demand is filed within 19 months.

See the Annex to Form PCT/IB/301 and, for details about the applicable time limits, Office by Office, see the PCT Applicant's Guide, Volume II, National Chapters and the WIPO Internet site.

Name and mailing address of the ISA/US
Mail Stop PCT, Attn: ISA/US
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
Facsimile No. (703) 305-3230

Docket: 703143-2001
Action: Suppl IDS
Date Due: 3/1/05

Authorized officer

WILLIAM DIXON

Telephone No. 571-272-1600

Janice Ford

Form PCT/ISA/220 (January 2004)

(See notes on accompanying sheet)

Docket: 703143-2001
Action: Resp to S Report
Date Due: 2/1/06

PATENT COOPERATION TREATY

PCT

INTERNATIONAL SEARCH REPORT

(PCT Article 18 and Rules 43 and 44)

| | | |
|--|---|---|
| Applicant's or agent's file reference VM7031436001 | FOR FURTHER ACTION <small>see Form PCT/ISA/220 as well as, where applicable, item 5 below</small> | |
| International application No. PCT/US05/08037 | International filing date (day/month/year) 14 March 2005 (14.03.2005) | (Earliest) Priority Date (day/month/year) 15 March 2004 (15.03.2004) |
| Applicant VARIAN MEDICAL SYSTEMS TECHNOLOGIES, INC. | | |

This international search report has been prepared by this International Searching Authority and is transmitted to the applicant according to Article 18. A copy is being transmitted to the International Bureau.

This international search report consists of a total of 3 sheets



It is also accompanied by a copy of each prior art document cited in this report.

1. Basis of the Report

a. With regard to the language, the international search was carried out on the basis of:



the international application in the language in which it was filed.



a translation of the international application into _____, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b))

b. ☐ With regard to any nucleotide and/or amino acid sequence disclosed in the international application, see Box No. I.

2. ☐ Certain claims were found unsearchable (See Box No. II)

3. ☐ Unity of invention is lacking (See Box No. III)

4. With regard to the title,



the text is approved as submitted by the applicant.



the text has been established by this Authority to read as follows:

5. With regard to the abstract,



the text is approved as submitted by the applicant.



the text has been established, according to Rule 38.2(b), by this Authority as it appears in Box No. IV. The applicant may, within one month from the date of mailing of this international search report, submit comments to this Authority.

6. With regard to the drawings,

a. the figure of the drawings to be published with the abstract is Figure No. 2



as suggested by the applicant.



as selected by this Authority, because the applicant failed to suggest a figure.



as selected by this Authority, because this figure better characterizes the invention.

b. ☐ none of the figures is to be published with the abstract.

INTERNATIONAL SEARCH REPORT

International application No.

PCT/US05/08037

| | | |
|---|---|--|
| A. CLASSIFICATION OF SUBJECT MATTER IPC(7) : G21K 1/12; H05G 1/60; A61B 6/00; G01N 23/00 US CL : 378/8 According to International Patent Classification (IPC) or to both national classification and IPC | | |
| B. FIELDS SEARCHED Minimum documentation searched (classification system followed by classification symbols) U.S. : 378/8, 4, 9, 5, 15, 19 Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched Electronic data base consulted during the international search (name of data base and, where practicable, search terms used) Please See Continuation Sheet | | |
| C. DOCUMENTS CONSIDERED TO BE RELEVANT | | |
| Category * | Citation of document, with indication, where appropriate, of the relevant passages | Relevant to claim No. |
| X | US 6,269,140 B1 (TAKAGI et al) 31 July 2001 (31.07.2001) see entire document. | 1-11, 14-27, 30-43 and 46-54 |
| A | US 5,265,142 A (HSIEH) 23 November 1993 (23.11.1993) see entire document. | 1-54 |
| <input type="checkbox"/> Further documents are listed in the continuation of Box C. <input type="checkbox"/> See patent family annex. | | |
| * Special categories of cited documents | | |
| "A" | document defining the general state of the art which is not considered to be of particular relevance | "T" later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention |
| "E" | earlier application or patent published on or after the international filing date | "X" document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone |
| "L" | document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified) | "Y" document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art |
| "G" | document referring to an oral disclosure, use, exhibition or other means | "&" document member of the same patent family |
| "P" | document published prior to the international filing date but later than the priority date claimed | |
| Date of the actual completion of the international search 21 October 2005 (21.10.2005) | | Date of mailing of the international search report 01 DEC 2005 |
| Name and mailing address of the ISA/US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230 | | Authorized officer WILLIAM DIXON <i>Janice Ford</i> Telephone No. 571-272-1600 <i>for</i> |

INTERNATIONAL SEARCH REPORT

International application No.
PCT/US05/08037

Continuation of B. FIELDS SEARC. LED Item 3:
Search Text: EAST;US-PGPUB;USPAT;DERWENT:EPO;JPO;IBM_TDB;USOCK
Search Terms: rotat\$4, gantry, CT, image, respiratory, cycle, x-ray and interval

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

| | | | |
|---|--|--|--|
| To: PETER C. MEI BINGHAM MCCUTCHEN LLP THREE EMBARCADERO CENTER, SUITE 1800 SAN FRANCISCO, CA 94111-4067 | | | 01 DEC 2005 |
| Applicant's or agent's file reference VM7031436001 | | | Date of mailing (day/month/year) 01 DEC 2005 |
| International application No. PCT/US05/08037 | | | FOR FURTHER ACTION See paragraph 2 below |
| International filing date (day/month/year) 14 March 2005 (14.03.2005) | Priority date (day/month/year) 15 March 2004 (15.03.2004) | | |
| International Patent Classification (IPC) or both national classification and IPC IPC(7): G21K 1/12; H05G 1/60; A61B 6/00; G01N 23/00 and US Cl.: 378/8, 4.95, 15.19 | | | |
| Applicant VARIAN MEDICAL SYSTEMS TECHNOLOGIES, INC. | | | |

1. This opinion contains indications relating to the following items:

- | | | |
|-------------------------------------|--------------|--|
| <input checked="" type="checkbox"/> | Box No. I | Basis of the opinion |
| <input type="checkbox"/> | Box No. II | Priority |
| <input type="checkbox"/> | Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability |
| <input type="checkbox"/> | Box No. IV | Lack of unity of invention |
| <input checked="" type="checkbox"/> | Box No. V | Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/> | Box No. VI | Certain documents cited |
| <input type="checkbox"/> | Box No. VII | Certain defects in the international application |
| <input type="checkbox"/> | Box No. VIII | Certain observations on the international application |

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 65.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

| | | |
|--|--|--|
| Name and mailing address of the ISA/ US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230 | Date of completion of this opinion 21 October 2005 (21.10.2005) | Authorized officer WILLIAM DIXON <i>Janie Ford</i> Telephone No. 571-272-1600 <i>for</i> |
|--|--|--|

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US05/08037

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of:

- ☒ the international application in the language in which it was filed
☐ a translation of the international application into _____, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

- ☐ a sequence listing
☐ table(s) related to the sequence listing

b. format of material

- ☐ on paper
☐ in electronic form

c. time of filing/furnishing

- ☐ contained in the international application as filed.
☐ filed together with the international application in electronic form.
☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US05/08037

Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)

Claims 12-13, 28-29 and 44-45 YES

Claims 1-11, 14-27, 30-43 and 46-54 NO

Inventive step (IS)

Claims 12-13, 28-29 and 44-45 YES

Claims 1-11, 14-27, 30-43 and 46-54 NO

Industrial applicability (IA)

Claims 1-54 YES

Claims NONE NO

2. Citations and explanations:

Please See Continuation Sheet

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US05/08037

Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

V. 2. Citations and Explanations:

7. Claims 1-11, 14-27, 30-43 and 46-54 lack novelty under PCT Article 33(2) as being anticipated by Takagi et al. (US Patent 6,269,140 B1).

With respect to claims 1, 17 and 33, Takagi teaches a method, computer readable medium associated with a data processing section (20) and having a set of stored instruction, the execution of which causes a method to be performed (column 5, lines 45-62) and system for collecting computed tomography (CT) image data, comprising: irradiating a portion of the patient with x-rays from an x-ray source disposed in a rotating gantry and detecting ones of the x-rays transmitted through the portion of the patient body to obtain image data; rotating the gantry to collect a set of CT image data of a lung of a patient, wherein each set of the CT image data corresponds to a phase of a respiratory cycle (column 7, lines 4-20).

With respect to claims 2-5, 18-21 and 34-37, Takagi teaches repeating the step of rotating to start scanning of the portion of body of the patient at substantially same phase within the different respiratory cycles (column 7, lines 45-53).

With respect to claims 6-11, 22-27 and 38-43, Takagi teaches controlling a rotation speed of the gantry in accordance with the output signal of breathing phase of the patient (column 7, lines 5-20 and 42-50).

With respect to claims 14-16, 30-32 and 46-48, Takagi teaches generating motion data associated with a breathing of the patient. Further method comprises synchronizing the collected CT image data and the motion data and sorting the collected CT image data such that CT image data that correspond to a same phase of a respiratory cycle are grouped for CT image reconstruction (column 7, lines 7-20, claims 9-11).

With respect to claim 49 and 52, Takagi teaches a method for generating a computed tomography (CT) image and computer readable medium associated with a data processing section (20) and having a set of stored instruction, the execution of which causes a method to be performed (column 5, lines 45-62), comprising: irradiating a portion of the patient with x-rays from an x-ray source disposed in the rotating gantry and detecting ones of the x-rays transmitted through the portion of the patient body to obtain image data; collecting data samples representative of a physiological movement of a patient due to breathing; rotating a gantry to acquire image data of at least a part of the patient; gathering image data acquired at a same phase of a breathing cycle; and generating a CT image using the gathered image data (column 7, lines 4-21 and 42-53 and claims 9-11).

With respect to claims 50 and 53, Takagi teaches controlling a speed of the gantry based on the data samples (column 7, lines 42-54).

With respect to claims 51 and 54, Takagi teaches that the generating the CT images comprises constructing a volumetric image (column 5, line 63 - column 6, line 9).

NOTES TO FORM PCT/ISA/220

These Notes are intended to give the basic instructions concerning the filing of amendments under Article 19. The Notes are based on the requirements of the Patent Cooperation Treaty, the Regulations and the Administrative Instructions under that Treaty. In case of discrepancy between these Notes and those requirements, the latter are applicable. For more detailed information, see also the *PCT Applicant's Guide*, a publication of WIPO.

In these Notes, "Article," "Rule" and "Section" refer to the provisions of the PCT, the PCT Regulations and the PCT Administrative Instructions, respectively.

INSTRUCTIONS CONCERNING AMENDMENTS UNDER ARTICLE 19

The applicant has, after having received the international search report, one opportunity to amend the claims of the international application. It should however be emphasized that, since all parts of the international application (claims, description and drawings) may be amended during the international preliminary examination procedure, there is usually no need to file amendments of the claims under Article 19 except where, e.g. the applicant wants the latter to be published for the purposes of provisional protection or has another reason for amending the claims before international publication. Furthermore, it should be emphasized that provisional protection is available in some States only.

What parts of the international application may be amended?

Under Article 19, only the claims may be amended.

During the international phase, the claims may also be amended (or further amended) under Article 34 before the International Preliminary Examining Authority. The description and drawings may only be amended under Article 34 before the International Preliminary Examining Authority.

Upon entry into the national phase, all parts of the international application may be amended under Article 28 or, where applicable, Article 41.

When? Within 2 months from the date of transmittal of the international search report or 16 months from the priority date, whichever time limit expires later. It should be noted, however, that the amendments will be considered as having been received on time if they are received by the International Bureau after the expiration of the applicable time limit but before the completion of the technical preparations for international publication (Rule 46.1).

Where not to file the amendments?

The amendments may only be filed with the International Bureau and not with the receiving Office or the International Searching Authority (Rule 46.2).

Where a demand for international preliminary examination has been/is filed, see below.

How? Either by cancelling one or more entire claims, by adding one or more new claims or by amending the text of one or more of the claims as filed.

A replacement sheet must be submitted for each sheet of the claims which, on account of an amendment or amendments, differs from the sheet originally filed.

All the claims appearing on a replacement sheet must be numbered in Arabic numerals. Where a claim is cancelled, no renumbering of the other claims is required. In all cases where claims are renumbered, they must be renumbered consecutively (Administrative Instructions, Section 205(b)).

The amendments must be made in the language in which the international application is to be published.

What documents must/may accompany the amendments?

Letter (Section 205(b)):

The amendments must be submitted with a letter.

The letter will not be published with the international application and the amended claims. It should not be confused with the "Statement under Article 19(1)" (see below, under "Statement under Article 19(1)").

The letter must be in English or French, at the choice of the applicant. However, if the language of the international application is English, the letter must be in English; if the language of the international application is French, the letter must be in French.

PATENT COOPERATION TREATY

From the INTERNATIONAL SEARCHING AUTHORITY

To:
 PETER C. MEI
 BINGHAM MCCUTCHEN LLP
 THREE EMBARCADERO CENTER, SUITE 1800
 SAN FRANCISCO, CA 94111-4067

PCT

NOTIFICATION OF TRANSMITTAL OF
 THE INTERNATIONAL SEARCH REPORT AND
 THE WRITTEN OPINION OF THE INTERNATIONAL
 SEARCHING AUTHORITY, OR THE DECLARATION

(PCT Rule 44.1)

| | | |
|---|--------------------|---|
| Applicant's or agent's file reference VM7031436001 | Date of (drawn) | Transmitted See paragraphs 1 and 4 below |
| International application No. PCT/US05/08037 | | Date 20. (14.03.2005) |
| Applicant VARIAN MEDICAL S ⁺ | U.S. Int. | |

- ☒ The applicant has filed that the international search report and the written opinion of the International Searching Authority have been received. The applicant is notified, if he so wishes, to amend the claims. The time limit for filing such amendments is now search report. Directly to the International Bureau of WIPO, 34 chemin des Colombettes 1211 Geneva 20, Switzerland, Facsimile No.: (41-22) 338.82.70. For more detailed instructions, see the notes on the accompanying sheet.
- ☐ The applicant is hereby notified that no international search report will be established and that the declaration under Article 17(2)(a) to that effect and the written opinion of the International Searching Authority are transmitted herewith.
- ☐ With regard to the protest against payment of (an) additional fee(s) under Rule 40.2, the applicant is notified that:
 - ☐ the protest together with the decision thereon has been transmitted to the International Bureau together with the applicant's request to forward the texts of both the protest and the decision thereon to the designated Offices.
 - ☐ no decision has been made yet on the protest; the applicant will be notified as soon as a decision is made.
- Reminders**
 Shortly after the expiration of 18 months from the priority date, the international application will be published by the International Bureau. If the applicant wishes to avoid or postpone publication, a notice of withdrawal of the international application, or of the priority claim, must reach the International Bureau as provided in Rules 90bis.1 and 90bis.3, respectively, before the completion of the technical preparations for international publication.
 The applicant may submit comments on an informal basis on the written opinion of the International Searching Authority to the International Bureau. The International Bureau will send a copy of such comments to all designated Offices unless an international preliminary examination report has been or is to be established. These comments would also be made available to the public but not before the expiration of 30 months from the priority date.
 Within 19 months from the priority date, but only in respect of some designated Offices, a demand for international preliminary examination must be filed if the applicant wishes to postpone the entry into the national phase until 30 months from the priority date (in some Offices even later); otherwise, the applicant must, within 20 months from the priority date, perform the prescribed acts for entry into the national phase before those designated Offices.
 In respect of other designated Offices, the time limit of 30 months (or later) will apply even if no demand is filed within 19 months.
 See the Annex to Form PCT/IB/301 and, for details about the applicable time limits, Office by Office, see the *PCT Applicant's Guide*, Volume II, National Chapters and the WIPO Internet site.

| | |
|--|--|
| Name and mailing address of the ISA/ US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3239 | Authorized officer WILLIAM DIXON <i>Janice Ford</i> Telephone No. 571-272-1600 |
|--|--|

Form PCT/ISA/220 (January 2004) (See notes on accompanying sheet)